IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.353 OF 2002

Bajirao Kalbhor ...Appellant

vs.

Pimpri Chinchwad New Town
Development Authorities & Ors. ...Respondents

Mr.N.V.Vechalekar for the Appellant
Mr.V.D.Patil for Respondent No.1

CORAM: A.S.OKA,J.
DATE : FEBRUARY 9, 2005.

P.C.:

1. The Appeal is by unsuccessful Plaintiff. It is an admitted position that the land bearing Survey No.14/6-B was acquired for the benefit of Respondent No.1-Authority and Award was made in the year 1977. In the year 1982 the Respondent No.1 issued notice to the Appellant stating therein that the Appellant has encroached upon the acquired land. Therefore, a suit came to be filed by the Appellant for challenging the notice.

2. The contention of the Appellant-Plaintiff is that though in the acquisition proceeding and in the revenue record the area of survey No.14/6-B is shown as 41 gunthas in fact the correct area is 51 gunthas and therefore, there is no acquisition in respect of 10 gunthas which is in possession of the Appellant.

3. The Trial Court decreed the suit. In an Appeal preferred by the Respondent the decree of the Trial Court has been set

aside and the suit filed by the Appellant has been dismissed.

4. It is not in dispute that during the pendency of the acquisition proceeding at no point of time the Appellant contended that the area of the land under acquisition was more than 41 gunthas. The revenue record all through out shows that the area of survey No.41/6-B is 41 gunthas. Reliance is placed on the map prepared by the Court Commissioner Prabhakar Khire who was a Surveyor in the office of D.I.L.R.,Pune and the map prepared by one Tanaji Garud, Maintenance Surveyor. The said two maps show that the area of said survey No.41/6-B is 51 gunthas. There is nothing on record to show that before carrying out the survey, the Maintenance Surveyor Tanaji Garud had issued notice to the Respondent No.1. The map has been prepared by the said Tanaji Garud during the pendency of the suit. In so far as the map prepared by the Court Commissioner is concerned, the report of the Court Commissioner does not disclose that notice of survey was given to the adjoining land holders. Obviously the said two maps cannot be considered as the authentic evidence of the contention that the area of survey No.41/6-B was 51 gunthas.

5. Thus, the Appellate Court was right when after considering all the oral and documentary evidence on record it disbelieved the case of the Appellant. Apart from considering the merits of the matter, the Appellate Court has also recorded a finding that in view of the law laid down by the Apex Court the suit

filed by the Appellant was maintainable as in substance the challenge in the suit is to the acquisition proceeding under the Land Acquisition Act, 1894.

6. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE.